

## **REMARKS**

Claims 1, 39, 41, and 44 have been amended. Claims 1 - 44 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

### **Claim Objection:**

The Examiner objected to claims 28, 40, and 42 under 37 CFR 1.75(c), as being “of improper dependent form for failing to further limit the subject matter of a previous claim”. Applicant respectfully asserts that the claim format is proper. According to M.P.E.P. 608.01(n)(III), a dependent claim may be in a different statutory class than the independent claim from which it depends. *See* M.P.E.P. 608.01(n)(III), which states, “The fact that the independent and dependent claims are in different statutory classes does not, in itself, render the latter improper.” Accordingly, Applicant respectfully requests withdrawal of this objection.

### **Section 101 Rejection:**

The Examiner rejected claims 1-13, 29-39, 41, 43, and 44 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Although Applicant respectfully traverses this rejection, in order to expedite prosecution, independent claims 1, 29, 41, and 44 have been amended to recite “using one or more computers” in the body of each claim. Applicant asserts claims 1, 29, 41, and 44 as amended are clearly directed toward statutory subject matter. Accordingly, Applicant respectfully requests removal of the section 101 rejection of claims 1-13, 29-39, 41, 43, and 44.

### **Section 103(a) Rejection:**

The Examiner rejected claims 1-44 under 35 U.S.C. § 103(a) as being unpatentable over Lustig et al. (U.S. Publication 2002/0002531) (hereinafter “Lustig”) in

view of Seymour et al. (U.S. Patent 6,871,190) (hereinafter “Seymour”). Applicant respectfully traverses this rejection for at least the reasons below.

**In regard to claim 1, Lustig in view of Seymour fails to teach or suggest receiving information indicating one or more default purchasing standards for a purchaser using an Internet web site to purchase a product or service; and, in response to the purchaser accepting a separate offer for negotiating improved terms within a specified time, rejecting one or more other offers, based on the default purchasing standards.** The Examiner cites paragraphs [0070-0073] of Lustig and refers to the fact that in Lustig’s system a user may connect to a publisher’s web site to submit an original offer. The Examiner also relies on the fact that Lustig’s system accepts the better of the user’s original offer and other offers. Thus, the Examiner’s position appears to be that a user selecting an original offer in Lustig’s system equates to receiving information indicating default purchasing standards for a purchaser using an Internet web site to purchase a product or service, as recited in Applicant’s claims. **However, Applicant’s claim 1 draws a distinction between “detecting an issuance of a commitment to purchase with associated terms” and “receiving information indicating one or more default purchasing standards.”** Thus, the user-selected offer to purchase an item in Lustig is not the same as receiving *default purchasing standards* that are distinct from terms associated with a commitment to purchase a product or service.

Furthermore, in the cited passage, Lustig teaches that his system provides a web page including a plurality offers to the user for selection. Presenting plurality of purchase offers from which a user selects an offer “in which the user is interested” (Lustig, para. [0070]) does not equate to, nor teach or suggest, even if combined with Seymour, *receiving information indicating default purchasing standards*, as recited in claim 1. Receiving information indicating that a user is *interested* in a *particular* offer, as taught by Lustig, is not the same as receiving information indicating *default purchasing standards* which are used in rejecting other offers that arise from the purchaser accepting a separate offer for negotiating improved terms within a specified time. The Examiner has erroneously conflated user selection of a particular offer with receiving *default*

*purchasing standards* that are used in rejecting other offers that arise from the purchaser accepting a separate offer for negotiating improved terms within a specified time. An offer is clearly not the same as default purchasing standards. No one of ordinary skill in the art would conflate the initial offer in Lustig with default purchasing standards as recited in Applicant's claim.

Lustig, even in light of Seymour, does not teach that a user selecting an offer of interest has anything to do with default purchasing standards used in rejecting other offers that arise from the purchaser accepting a separate offer for negotiating improved terms within a specified time. Nor does Lustig, even in view of Seymour, teach that user selected offers are used as default purchasing standards in rejecting other offers that arise from the purchaser accepting a separate offer for negotiating improved terms. Therefore, Lustig and Seymour, whether considered singly or in combination, clearly fail to teach or suggest receiving information indicating one or more default purchasing standards for a purchaser using an Internet web site to purchase a product or service; and, in response to the purchaser accepting a separate offer for negotiating improved terms within a specified time, rejecting one or more other offers, based on the default purchasing standards.

In regards to claim 1, Applicant has argued that Lustig in view of Seymour **fails to teach or suggest receiving information indicating one or more default purchasing standards for a purchaser using an Internet web site to purchase a product or service**. The Examiner's position appears to be that a user selecting an offer in Lustig's system inherently includes receiving information indicating default purchasing standards for the purchaser. Specifically, the Examiner's Answer cites paragraphs 70-73 of Lustig and states, "the original offer and the [user] selected indicator is equivalent to the purchaser default settings as described in the Applicant's Specification" (emphasis by Examiner, Examiner's Answer, p. 10).

The Examiner is improperly ignoring the plain meaning of the language from Applicant's claim and is instead relying on particular, hand-picked, phrases from

Applicants' specification to unnecessarily and improperly "define" the phrase "default purchasing standards" in Applicants' claim.

As is described in the M.P.E.P. at 2111.01, "... the words of a claim must be given their plain meaning unless Applicant has provided a clear definition in the specification." *In re Zletz*, 893, F. 2d 319, 321, 13 USPQ 2d 1320, 1322 (Fed. Cir. 1989); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F. 3d 1371, 1372, 69 USPQ 2d 1857 (Fed. Cir. 2004). Furthermore, "It is only when the specification provides definitions for terms appearing in the claims that the specification can be used in interpreting claim language." *In re Vogel*, 422 F. 2d 538, 441, 164 USPQ 619, 622 (CCPA 1970). In the present case, the Examiner is improperly using Applicant's specification to interpret and define the language of Applicant's claim.

Specifically, the Examiner has selected particular phrases from Applicants' specification to define the term "default purchasing standards." For example, the Examiner argues that Applicant's specification describes default purchasing standards as only involving price comparison (Examiner's Answer, p. 9, last paragraph), while ignoring the fact that the specification (in the same section as that relied on by the Examiner) also states "the default standards set the by purchaser may include such risk factors as whether the goods are perishable, a scarcity, or a good that carries product liabilities, such as chemicals" (Applicant's Specification, p. 15, lines 20-25).

Thus, not only the Examiner improperly using Applicant's Specification to define Applicant's claim language, the Examiner is clearly relying only on particular portions of the specification while ignoring those portions that do not support the Examiner's argument. Furthermore, the Examiner is overlooking the fact that Applicant's claim (and specification) makes a clear distinction between simply committing to purchase a particular product or service and specifying default purchasing standards.

**Further in regard to claim 1, Lustig in view of Seymour fails to teach or suggest rejecting one or more of the plurality of offers based on the default**

**purchasing standards.** The Examiner cites paragraphs [0060] and [0061] of Lustig, reproduced below:

The matching program 260 is adapted to, upon request, and upon receipt of the original offer information, retrieve the available offer information from the matching database 270 and compare the available offer information with the original offer information to determine whether the better offer is available. (paragraph [0060], emphasis added)

Further, the matching program 260 is adapted to, when directed, accept the better offer on behalf of the user originating the request. In this embodiment, the matching program 260 is also adapted to, when directed, accept the original offer on behalf of the user originating the request, if the original offer information is in the matching database 270. (paragraph [0061], emphasis added)

**Nowhere does Lustig teach anything at all about actively rejecting an offer.** In the Examiner's remarks, the Examiner appears to assert that by accepting an offer, the matching program rejects another offer. However, just because one offer is accepted does not mean that another is actively rejected. Other offers could be kept "alive" for numerous reasons. The actual teachings of Lustig fail to substantiate the Examiner's assertion. Lustig, even when combined with Seymour, fails to teach or suggest actively rejecting one or more of the plurality of offers based on the default purchasing standards.

In response to the Examiner's assertions that merely accepting one offer inherently includes rejecting one or more other offers, Applicant has argued that just because one offer is accepted, other offers are not automatically nor necessarily rejected. In the Response to Arguments section of the Examiner's Answer, the Examiner fails to substantially respond to Applicant's arguments. As noted above, Applicant's claim and specification make a clear distinction between accepting an offer and indicating default purchasing standards. The Examiner has not provided any rebuttal to Applicant's arguments regarding the fact that accepting one offer does not inherently or necessarily include or suggest rejecting other offers. Furthermore, as noted above, the Examiner's reliance on the particular definition of "default purchasing standards" based on Applicant's specification is misplaced because the Examiner fails to use the plain meaning of the claim language.

Applicant has also argued that other (non-accepted) offers may be kept “open” or “alive” for any of various reasons (e. g., as a backup in case the original offer fails through). The Examiner has also failed to respond to this argument in the Examiner’s Answer. Instead, the Examiner merely states how Lustig’s program works (e.g., “Lustig teaches [that] the matching program ... retrieves the available offer ... compares the available offer with the original offer ... if the better offer is available, accepts the better offer on behalf of the user” (Examiner’s Answer, pp 8-9). The Examiner then simply concludes, “by accepting the original offer, it is obvious that the matching program rejects the offers that do not [match] with the original offer”, citing paragraphs 60-61 of Lustig. While the cited passage describes that Lustig’s matching programs compares offers and accepts one (generally the better price), Lustig does not teach or suggest that the non-accepted offers are rejected.

The Examiner does not state any reason why one of ordinary skill would consider it obvious to specifically reject all other offers when accepting one offer. Instead, the Examiner merely states his own unsupported opinion that it is obvious. Nor has the Examiner, even in response to Applicant’s previous arguments, provided any evidentiary support of his opinion that accepting one offer “obviously includes” rejecting, as opposed to simply not accepting, the other offers.

Furthermore, the Examiner’s logic does not make sense. According to the Examiner’s interpretation, a user in Lustig’s system would never be able to accept more than one offer since after selecting one offer, the others would automatically be rejected. Such an interpretation cannot be correct.

Moreover, following the Examiner’s line of reasoning, Lustig’s system rejects other offers, not based on default purchasing standards but based on the simple fact of having accepting another offer. Thus, even according to the Examiner’s interpretation, Lustig fails to teach or suggest rejecting other offers based on default purchasing standards, as recited in Applicant’s claim.

**Additionally, the cited art fails to teach or suggest, in response to said purchaser accepting said offer, presenting one of the plurality of offers to the purchaser, wherein the presented offer includes said improved terms.** The Examiner cites paragraphs [0042]-[0044] of Lustig, which describes a “Publisher” receives offer information from vendors and “uses the Web server 140 to present Web pages that contain the offer information, for example, in the manner of an electronic catalog” (paragraph [0044]). While Lustig does disclose “Web pages that contain the offer information,” this offer information is presented to the user before the user indicates an “original offer” as illustrated by paragraph [0070] reproduced below:

During operation of the system 50, the User operates the User's computer 100 to connect to the Publisher's Web site and communicate with the interaction program 240 that, in coordination with the presentation program 230, enables the EUREKA-1 (3.0-001) User to navigate the Publisher's Web site. Once at the Publisher's Web site, the User uses the browsing and/or searching tools available on the Web site to request a Web page describing a plurality of offers, including the First Offer and the Second Offer. In response to the request, the Publisher Server 140, through the functionality of the offer management program 165 and database 170, delivers the requested Web page to the User's computer 100, thus presenting the User with at least one offer. The particular offer in which the User is interested will be referred to herein as the "original offer". In some examples discussed below, the User is interested in the First Offer. In other examples discussed below, the User is interested in the Second Offer. (emphasis added)

Clearly, according to Lustig, the user selects an offer (*see e.g.*, paragraph [0070]) after the user has viewed the Web page describing a plurality of offers. Accordingly, the cited portion of Lustig cannot teach presenting one of the plurality of offers to the purchaser wherein the presented offer includes said improved terms in response to said purchaser accepting said offer since Lustig teaches that his user selects an indicator after the user is presented with a Web page describing a plurality of offers. At no time in Lustig's system is the user presented with another set of offers, whether or not they include the improved terms, in response to the user selecting the original offer.

In the Response to Arguments section of the Examiner's Answer, the Examiner fails to substantially respond to Applicant's arguments. Instead, the Examiner relies simply on the fact that Lustig's system will accept a better offer (than that selected by the user) on behalf of the user (Examiner's Answer, p 10). The Examiner then merely concludes, "Lustig does teach that the presented offer includes the improved terms" without specifically addressing any of Applicant's particular arguments.

However, Applicant is not arguing that Lustig in view of Seymour does not teach accepting an offer with better terms. Instead, as noted previously, Applicant's argument is that Lustig, even if combined with Seymour, does not *present an offer* to the user *in response* to the user accepting an offer to purchase a product or service, where the presented offer includes the improved terms.

The Examiner has completely failed to provide any reasoning or evidence to support the contention that Lustig's system would present the "better offer" to the user (despite a lack of support in Lustig) and that such a presentation would necessarily include the improved terms. The Examiner does not explain how or why accepting an offer on behalf of the user necessarily includes presenting that offer to the user despite a complete lack of such teaching in Lustig.

**In fact, Lustig appears to teach away from, in response to said purchaser accepting said offer, presenting one of a plurality of offers to a purchaser, wherein the presented offer includes said improved terms,** as illustrated by paragraph [0081] reproduced below:

Accordingly, after the matching program 260 has completed its determination, and if the matching program 260 determines that the better offer is available, the matching program 260 accepts the better offer on behalf of the User. (paragraph [0081], lines 1-5; emphasis added)

According to Lustig, after determining that the "better offer" is available, the matching program "accepts the better offer on behalf of the User." Nowhere does Lustig teach that the actual "better offer" is presented to the user. Instead, Lustig's system initially presents the user with a plurality of offer and in response to the user selecting one of the



offers, accepts either that offer, or a better offer, “on behalf of the user” without presenting the additional, other offers to the user. Accordingly, Lustig fails to teach or suggest in response to said purchaser accepting said offer, presenting one of a plurality of offers to a purchaser, wherein the presented offer includes said improved terms. The Examiner’s Answer fails to respond to Applicant’s argument that Lustig teaches away from this limitation.

Moreover, “A *prima facie* case of obviousness can be rebutted if the Applicant...can show that the art in any material respect 'taught away' from the claimed invention...A reference may be said to teach away when a person of ordinary skill, upon reading the reference...would be led in a direction divergent from the path that was taken by the Applicant.” *In re Haruna*, 249 F.3d 1327, 58USPQ2d 1517 (Fed. Cir. 2001).

Thus, for at least the reasons presented above, the rejection of claim 1 is unsupported by the cited art and removal thereof is respectfully requested.

**In regard to claim 14, Lustig, in view of Seymour, fails to teach or suggest receiving information indicating one or more default purchasing standards for the purchaser; and, in response to said purchaser accepting a separate offer for negotiating improved terms within a specified time, rejecting one or more other offers, based on the default purchasing standards.**

The Examiner cites paragraphs [0070-0073] of Lustig and refers to the fact that in Lustig’s system a user may connect to a publisher’s web site to submit an original offer. The Examiner also relies on the fact that Lustig’s system accepts the better of the user’s original offer and other offers. Thus, the Examiner’s position appears to be that a user selecting an original offer in Lustig’s system equates to receiving information indicating default purchasing standards for a purchaser using an Internet web site to purchase a product or service, as recited in Applicant’s claims. **However, Applicant’s claim 14 draws a distinction between “detecting an issuance of a commitment to purchase**

*with associated terms” and “receiving information indicating one or more default purchasing standards”.* Thus, the user-selected offer to purchase an item in Lustig is not the same as receiving *default purchasing standards* that are distinct from terms associated with a commitment to purchase a product or service.

Furthermore, in the cited passage, Lustig teaches that his system provides a web page including a plurality offers to the user for selection. Presenting plurality of purchase offers from which a user selects an offer “in which the user is interested” (Lustig, para. [0070]) does not equate to, nor teach or suggest, even if combined with Seymour, *receiving information indicating default purchasing standards*, as recited in claim 14. Receiving information indicating that a user is *interested* in a *particular* offer, as taught by Lustig, is not the same as receiving information indicating *default purchasing standards* which are used in rejecting other offers that arise from the purchaser accepting a separate offer for negotiating improved terms within a specified time. The Examiner has erroneously conflated user selection of a particular offer with receiving *default purchasing standards* that are used in rejecting other offers that arise from the purchaser accepting a separate offer for negotiating improved terms within a specified time. An offer is clearly not the same as default purchasing standards. No one of ordinary skill in the art would conflate the initial offer in Lustig with default purchasing standards as recited in Applicant’s claim.

Lustig, even in light of Seymour, does not teach that a user selecting an offer of interest has anything to do with default purchasing standards used in rejecting other offers that arise from the purchaser accepting a separate offer for negotiating improved terms within a specified time. Nor does Lustig, even in view of Seymour, teach that user selected offers are used as default purchasing standards in rejecting other offers that arise from the purchaser accepting a separate offer for negotiating improved terms. Therefore, Lustig and Seymour, whether considered singly or in combination, clearly fail to teach or suggest receiving information indicating one or more default purchasing standards for a purchaser using an Internet web site to purchase a product or service; and, in response to

the purchaser accepting a separate offer for negotiating improved terms within a specified time, rejecting one or more other offers, based on the default purchasing standards.

In regards to claim 14, Applicant has argued that Lustig in view of Seymour **fails to teach or suggest receiving information indicating one or more default purchasing standards for a purchaser using an Internet web site to purchase a product or service.** The Examiner's position appears to be that a user selecting an offer in Lustig's system inherently includes receiving information indicating default purchasing standards for the purchaser. Specifically, the Examiner's Answer cites paragraphs 70-73 of Lustig and states, "the original offer and the [user] selected indicator is equivalent to the purchaser default settings as described in the Applicant's Specification" (emphasis by Examiner, Examiner's Answer, p. 10).

In the Response to Arguments section of the Examiner's Answer, the Examiner does not provide any specific responses regarding claim 14, but relies on responses to Applicant's arguments regarding claim 1.

As noted above regarding the rejection of claim 1, the Examiner is improperly ignoring the plain meaning of the language from Applicant's claim and is instead relying on particular, hand-picked, phrases from Applicant's specification to unnecessarily and improperly "define" the phrase "default purchasing standards" in Applicant's claim. Specifically, the Examiner has selected particular phrases from Applicant's specification to define the term "default purchasing standards." The Examiner is also clearly relying only on particular portions of the specification while ignoring those portions that do not support the Examiner's argument. Furthermore, the Examiner is overlooking the fact that Applicant's claim (and specification) makes a clear distinction between simply committing to purchase a particular product or service and specifying default purchasing standards. Please refer to Applicant's remarks regarding claim 1 above, as they apply to the rejection of claim 14 as well.

**Further in regard to claim 14, Lustig in view of Seymour fails to teach or suggest rejecting one or more of the plurality of offers based on the default purchasing standards.** The Examiner cites paragraph [0060] and [0061] of Lustig, reproduced below:

The matching program 260 is adapted to, upon request, and upon receipt of the original offer information, retrieve the available offer information from the matching database 270 and compare the available offer information with the original offer information to determine whether the better offer is available. (paragraph [0060], emphasis added)

Further, the matching program 260 is adapted to, when directed, accept the better offer on behalf of the user originating the request. In this embodiment, the matching program 260 is also adapted to, when directed, accept the original offer on behalf of the user originating the request, if the original offer information is in the matching database 270. (paragraph [0061], emphasis added)

**Nowhere does Lustig teach anything at all about actively rejecting an offer.** In the Examiner's remarks, the Examiner appears to assert that that by accepting an offer, the matching program rejects another offer. However, just because one offer is accepted does not mean that another is actively accepted. Other offers could be kept "alive" for numerous reasons. The actual teachings of Lustig fail to substantiate the Examiner's assertion. Lustig, even when combined with Seymour, fails to teach or suggest actively rejecting one or more of the plurality of offers based on the default purchasing standards.

In response to the Examiner's assertions that merely accepting one offer inherently includes rejecting one or more other offers, Applicant has argued that just because one offer is accepting, other offers are not automatically nor necessarily rejected. As noted previously, Applicant's claim and specification make a clear distinction between accepting an offer and indicating default purchasing standards. The Examiner has not provided any rebuttal to Applicant's arguments regarding the fact that accepting one offer does not inherently or necessarily include or suggest rejecting other offers. Furthermore, as noted above, the Examiner's reliance on the particular definition of "default purchasing standards" based on Applicant's specification is misplaced because the Examiner fails to use the plain meaning of the claim language.

Applicant has also argued that other (non-accepted) offers may be kept “open” or “alive” for any of various reasons (e. g., as a backup in case the original offer fails through). The Examiner has also failed to respond to this argument in the Examiner’s Answer. Instead, the Examiner argues, “by accepting the original offer, it is obvious that the matching program rejects the offers that do not [match] with the original offer”, citing paragraphs 60-61 of Lustig. While the cited passage describes Lustig’s matching programs comparing offers and accepts one (generally the better price), Lustig does not teach or suggest that the non-accepted offers are rejected. The Examiner does not state any reason why one of ordinary skill would consider it obvious to specifically reject all other offers when accepting one offer. Instead, the Examiner merely states the opinion that is obvious. Nor has the Examiner, even in response to Applicant’s previous arguments, provided any evidentiary evidence to support the opinion that accepting one offer “obviously includes” rejecting, as opposed to simply not accepting, the other offers.

Moreover, following the Examiner’s line of reasoning, Lustig’s system rejects other offers, not based on default purchasing standards but based on the simply fact of having accepting another offer. Thus, even according to the Examiner’s interpretation, Lustig fails to teach or suggest rejecting other offers based on default purchasing standards, as recited in Applicant’s claim.

Please refer to Applicant’s remarks regarding claim 1 above, as they apply to the rejection of claim 14 as well.

**Additionally, the cited portion of Lustig fails to teach or suggest, in response to said purchaser accepting said offer presenting one of the plurality of offers to the purchaser, wherein the presented offer includes said improved terms.** The Examiner cites paragraphs [0042]-[0044] of Lustig, which describes a “Publisher” receives offer information from vendors and “uses the Web server 140 to present Web pages that contain the offer information, for example, in the manner of an electronic catalog” (paragraph [0044]). While Lustig does disclose “Web pages that contain the offer

information,” this offer information is presented to the user **before the user indicates an “original offer”** as illustrated by paragraph [0070] reproduced below:

During operation of the system 50, the User operates the User's computer 100 to connect to the Publisher's Web site and communicate with the interaction program 240 that, in coordination with the presentation program 230, enables the EUREKA-1 (3.0-001) User to navigate the Publisher's Web site. Once at the Publisher's Web site, the User uses the browsing and/or searching tools available on the Web site to request a Web page describing a plurality of offers, including the First Offer and the Second Offer. In response to the request, the Publisher Server 140, through the functionality of the offer management program 165 and database 170, delivers the requested Web page to the User's computer 100, thus presenting the User with at least one offer. The particular offer in which the User is interested will be referred to herein as the "original offer". In some examples discussed below, the User is interested in the First Offer. In other examples discussed below, the User is interested in the Second Offer. (emphasis added)

Clearly, according to Lustig, **the user selects an offer** (see e.g., paragraph [0070]) **after the user has viewed the Web page describing a plurality of offers**. Accordingly, the cited portion of Lustig cannot teach presenting one of the plurality of offers to the purchaser wherein the presented offer includes said improved terms **in response to said purchaser accepting said offer** since Lustig teaches that his user selects an indicator after the user is presented with a Web page describing a plurality of offers. At no time in Lustig's system is the user presented with another set of offers, whether or not they include the improved terms, in response to the user selecting the original offer.

In the Response to Arguments section of the Examiner's Answer (regarding claim 1), the Examiner fails to substantially respond to Applicant's arguments. Instead, the Examiner relies simply on the fact that Lustig's system will accept a better offer (than that selected by the user) on behalf of the user (Examiner's Answer, p 10). The Examiner then merely concludes, “Lustig does teach that the presented offer includes the improved terms” without specifically addressing any of Applicant's particular arguments.

The Examiner has completely failed to provide any reasoning or evidence to support the contention that Lustig' system would present the “better offer” to the user

(despite a lack of support in Lustig) and that such a presentation would necessarily include the improved terms. The Examiner does not explain how or why accepting an offer on behalf of the user necessarily includes presenting that offer to the user despite a complete lack of such teaching in Lustig.

Please refer to Applicant's remarks regarding claim 1 above, as they apply to the rejection of claim 14 as well.

**In fact, Lustig appears to teach away from, in response to said purchaser accepting said offer, presenting one of a plurality of offers to a purchaser, wherein the presented offer includes said improved terms** as illustrated by paragraph [0081] reproduced below:

Accordingly, after the matching program 260 has completed its determination, and if the matching program 260 determines that the better offer is available, the matching program 260 accepts the better offer on behalf of the User. (paragraph [0081], lines 1-5; emphasis added)

According to Lustig, after determining that the "better offer" is available, the matching program "accepts the better offer on behalf of the User." Nowhere does Lustig teach that the actual "better offer" is presented to the user. Instead, Lustig's system initially presents the user with a plurality of offer and in response to the user selecting one of the offers, accepts either that offer, or a better offer, "on behalf of the user" without presenting the additional, other offers to the user. Accordingly, Lustig fails to teach or suggest in response to said purchaser accepting said offer, presenting one of a plurality of offers to a purchaser, wherein the presented offer includes said improved terms. The Examiner's Answer fails to respond to Applicant's argument that Lustig teaches away from this limitation.

Please refer to Applicant's remarks regarding claim 1 above, as they apply to the rejection of claim 14 as well.

For at least the reasons presented above, the rejection of claim 14 is unsupported by the cited art and removal thereof is respectfully requested.

Regarding claim 29, Lustig, in view of Seymour, fails to teach or suggest that if a better price is found before the predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. **The Examiner does not provide a proper rejection of claim 29.** The Examiner merely states that claims “29 – 40 contain similar limitations found in claims 1-13 above, therefore [claims 29 – 40] are rejected by the same rational.” **However, none of claims 1-13, nor the rejection of those claims, mentions anything regarding purchasing an item or service for a purchaser at a better price and charging the purchaser a new price between the particular price and the better price.** The Examiner has improperly failed to consider the specific limitations of Applicant’s claim. **Therefore, no *prima facie* rejection has been stated in regard to claim 29.**

As noted above, Lustig in view of Seymour fails to teach or suggest purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. Lustig’s system teaches only that the best offer found is accepted on behalf of the user. Nowhere does Lustig mention purchasing an item or service at a better price and charging the purchaser a new price between the particular price and the better price. Similarly, Seymour is silent regarding this limitation of Applicant’s claim. Seymour’s automated auction system allows buyers and sellers said to configure specific auction strategies that are implemented by bidder and seller agents. Nothing in Seymour’s teaches or suggests purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. Additionally, there is nothing about the Examiner’s combination of Lustig and Seymour that teaches or suggests this limitation of Applicant’s claim.

In the Examiner’s response to arguments, the Examiner, without citing any portion of Lustig or Seymour in support, refers to the fact that Lustig’s system may accept a better offer (than the user’s originally selected offer) on behalf of the user. The



Examiner then asserts, “Lustig obviously teaches purchasing the particular item [or] service for the purchaser that [at] the better price and charging the purchaser a new price between the particular price and the better.” **However, the Examiner’s assertion is completely unsupported by the actual teachings of the reference.** Nowhere does Lustig, even if viewed in light of Seymour, teach anything regarding purchasing the item for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. In fact, the very wording used by Lustig seems to teach away from charging the user a new price between price of Lustig’s original offer and the price of a better offer. As admitted by the Examiner, Lustig teaches that his system, “accepts the better offer on behalf of the User” (para. 9, 15, 25, 19 and 81). Accepting a better offer *on behalf of the user* clearly implies that the better offer, and hence the cost or price of the better offer, is accepted by Lustig’s system for the user. In contrast, Applicant’s claim specifically recites charging the purchaser a new price between the particular price and the better price. Therefore, Lustig’s system does not necessarily or inherently include or even suggest charging the user a price **between the original price and the better price.**

Regarding claim 29, Applicant has argued that Lustig in view of Seymour fail to teach or suggest that if a better price is found before the predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. Applicant has also argued that **the Examiner does not provide a proper rejection of claim 29.** Instead, the Examiner relies on the rejection of claims 1-13. However as noted in Applicant’s Appeal Brief, none of claims 1-13, nor of their rejections, mentions anything about purchasing an item or service for a purchaser at a better price and charging the purchaser a new price between the particular price and the better price.

In response to Applicant’s previous arguments, the Examiner refers to the fact that Lustig’s system may accept a better offer (better than the user’s originally selected offer) on behalf of the user. The Examiner then asserts, “Lustig obviously teaches purchasing the particular item [or] service for the purchaser [at] the better price and

charging the purchaser a new price between the particular price and the better [price]” (Examiner’s Answer, p. 13).

**However, the Examiner’s assertion is completely unsupported by the actual teachings of the cited references.** Nowhere does Lustig, even in light of Seymour, teach anything about purchasing an item for a better price and charging the user a new price between the original price and the better price.

Lustig’s system may accept an offer that is priced between an original offer and a third offer that is unacceptable (or unavailable) for some reason. For instance, the Examiner describes a hypothetical scenario in which a second offer is priced lower than the original offer but higher than a third offer. In the Examiner’s scenario, the third offer is unacceptable and thus Lustig’s system would accept the second offer on behalf of the user. The Examiner’s reasoning is thus that since the second offer’s price is between that the first and third offers, Lustig’s system would then charge the user a price between the first offer (e.g., the original) and the third offer. See the Examiner’s Answer, p. 13.

The Examiner is overlooking the fact that Applicant’s claim recites that the new price is between the original price and the price of the accepted offer (e.g., “purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between said particular price and said better price”). In contrast, in the Examiner’s hypothetical scenario, Lustig’s system would purchase the product at the price of the second offer and would charge the user the same price (of the second offer). The fact that another, unacceptable offer may have an even lower price has no bearing on how Lustig’s system would purchase a product on behalf of the user.

Furthermore, Lustig **teaches away** from purchasing the product at the better price and charging the purchaser a new price between the original price and the better price. For instance, as admitted by the Examiner, Lustig teaches that his system “accepts the better offer on behalf of the user” (Lustig, paragraphs 9, 19, 25 and 81). Accepting a better offer on behalf of the user clearly implies that the better offer, and hence the cost or

price of the better offer is accepted on behalf of the user. In contrast Applicant's claim specifically recites charging a new price between the particular price and the better price. By accepting the better offer, and hence the better price, "on behalf of the user" Lustig clearly **teaches away** from Applicant's claimed subject matter.

Thus, for at least the reasons presented above, the rejection of claim 29 is unsupported by the cited art and removal thereof is respectfully requested.

**In regard to claim 41, Lustig in view of Seymour fails to teach or suggest intercepting a message over the Internet to delay the purchase for a predetermined amount of time, wherein the message includes commitment to purchase information for the purchaser regarding the item or service.** The Examiner asserts that intercepting a message over the Internet is "well known in the art" and that it would have been obvious "to modify Lustig's [system] in combining (sic) with Seymour ... for the purpose of providing more efficiency and convenient in communication over the Internet." However, the Examiner's assertion that intercepting a message over the Internet, where the message includes commitment to purchase is well known is merely the Examiner's opinion.

Furthermore, the Examiner has changed the subject which for the Examiner is taking Official Notice between the Final Action and the Examiner's Answer. For instance, in the Final Action, the Examiner stated, "intercepting a message over the Internet, wherein the message includes commitment to purchase is well known in the art" (Final Action, p. 10). In the rejection listed in the Examiner's Answer, the Examiner now argues that "intercepting a message over the Internet *to delay the purchase for a predetermined amount of time*, wherein the message includes commitment to purchase is well known in the art." Thus, the Examiner has improperly introduced what is essentially a new ground of rejection in the Examiner's Answer, without identifying it as a new ground of rejection.

**The Examiner hasn't cited any prior art that supports the Examiner's contention that it is obvious to intercept a message over the Internet where the message includes commitment to purchase information.** M.P.E.P. 2144.03A clearly states, "It is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based." That is precisely the case here. The Examiner has merely stated that it is "well known in the art" to intercept a message over the Internet where the message includes commit to purchase information. The Examiner's assertion is the "principal evidence" upon which the rejection of Applicant's claim is based.

**Additionally, the Examiner's rejection does not take into account the full and complete language of Applicant's claim.** The Examiner's rejection does not address the fact that claim 41 recites intercepting a message over the Internet *to delay the purchase for a predetermined amount of time*. Lustig and Seymour, as admitted by the Examiner do not mention anything regarding intercepting a message over the Internet to delay the purchase for a predetermined amount of time. The Examiner does not cite any prior art that teaches or suggests intercepting a message to delay a purchase for a predetermined amount of time. The Examiner's combination of cited art thus fails to teach or suggest all claim limitations. M.P.E.P. §2143.03 clearly states that all claim limitations must be taught or suggested by the prior art to establish *prima facie* obviousness. **The Examiner has failed to response to this argument as prevented previously.**

**Additionally, the Examiner has failed to provide a proper reason for modifying Lustig in view of Seymour.** The Examiner has stated a general goal of improving the efficiency of Internet communication. The reason given by the Examiner would actually teach away from Applicant's claimed invention. One seeking to "provide more efficiency and convenience in Internet communication" would not be motivated to modify the combination of Lustig and Seymour to include intercepting a message over the Internet to delay a purchase for a predetermined amount of time, where the message

includes commitment to purchase information. **The Examiner has failed to respond to this argument as prevented previously.**

**Additionally, Lustig in view of Seymour fail to teach or suggest that if a better price is found before the predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. The Examiner does not provide a proper rejection of claim 44.** The Examiner merely states that claims “41, 42, and 44 contain similar limitations found in claims 1, therefore [claims 41, 42, and 44] are rejected by the same rational.” **However, claim 1 as well as the rejection of claim 1 fails to mention anything regarding purchasing an item or service for a purchaser at a better price and charging the purchaser a new price between the particular price and the better price.** The Examiner has improperly failed to consider the specific limitations of Applicant’s claim. **Therefore, no *prima facie* rejection has been stated in regard to claim 41. The Examiner has failed to respond to the argument as presented previously.**

As noted above, Lustig in view of Seymour fails to teach or suggest purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. Lustig’s system teaches only that the best offer found is accepted on behalf of the user. Nowhere does Lustig mention purchasing an item or service at a better price and charging the purchaser a new price between the particular price and the better price. Similarly, Seymour is silent regarding this limitation of Applicant’s claim. Seymour’s automated auction system allows buyers and sellers said to configure specific auction strategies that are implemented by bidder and seller agents. Nothing in Seymour’s teaches or suggests purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. Additionally, there is nothing about the Examiner’s combination of Lustig and Seymour that teaches or suggests this limitation of Applicant’s claim.

In the Examiner's response to arguments, the Examiner, without citing any portion of Lustig or Seymour in support, refers to the fact that Lustig's system may accept a better offer (than the user's originally selected offer) on behalf of the user. The Examiner then asserts, "Lustig obviously teaches purchasing the particular item [or] service for the purchaser that [at] the better price and charging the purchaser a new price between the particular price and the better." **However, the Examiner's assertion is completely unsupported by the actual teachings of the reference.** Nowhere does Lustig, even if viewed in light of Seymour, teach anything regarding purchasing the item for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. In fact, the very wording used by Lustig seems to teach away from charging the user a new price between price of Lustig's original offer and the price of a better offer. As admitted by the Examiner, Lustig teaches that his system, "accepts the better offer on behalf of the User" (para. 9, 15, 25, 19 and 81). Accepting a better offer *on behalf of the user* clearly implies that the better offer, and hence the cost or price of the better offer, is accepted by Lustig's system for the user. In contrast, Applicant's claim specifically recites charging the purchaser a new price between the particular price and the better price. Therefore, Lustig's system does not necessarily or inherently include or even suggest charging the user a price **between the original price and the better price**.

Thus, for at least the reasons presented above, the rejection of claim 41 is unsupported by the cited art and removal thereof is respectfully requested.

**In regard to claim 44, Lustig in view of Seymour fails to teach or suggest a plurality of broker-agent programs performing multiple searches in parallel for the better price.** In the Examiner's Answer, the Examiner states, "retrieving and comparing a plurality of available offers to determine the better offer is considered equivalent to performing multiple searches in parallel for better price", referring to Lustig's matching programming organizing, storing and retrieving a plurality of offers from a matching database. Applicant strongly disagrees. Lustig, even if combined with Seymour, does not teach a plurality of broker-agent programs performing multiple searches in parallel for the better price. The Examiner even states that Lustig's matching program "organizes, stores, and retrieves a plurality of available offers

*from a matching database*” (italics added). Thus, **as admitted by the Examiner**, Lustig teaches retrieving other offers from a database, not a plurality of broker-agent programs performing multiple searches in parallel. Offers may be obtained in order to fill a database in numerous ways. The Examiner’s contention that retrieving a plurality of offers from a database is “equivalent to” performing multiple searches in parallel is simply incorrect and is clearly unsupported by the cited art.

**Additionally, Lustig in view of Seymour fail to teach or suggest that if a better price is found before the predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. The Examiner does not provide a proper rejection of claim 44.** The Examiner merely states that claims “41, 42, and 44 contain similar limitations found in claims 1, therefore [claims 41, 42, and 44] are rejected by the same rational.” **However, claim 1 as well as the rejection of claim 1 fails to mention anything regarding purchasing an item or service for a purchaser at a better price and charging the purchaser a new price between the particular price and the better price.** The Examiner has improperly failed to consider the specific limitations of Applicant’s claim. **Therefore, no *prima facie* rejection has been stated in regard to claim 44.**

As noted above and argued in Applicant’s Appeal Brief and Applicant’s Reply Brief, Lustig in view of Seymour fails to teach or suggest purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. Lustig’s system teaches only that the best offer found is accepted on behalf of the user. Nowhere does Lustig mention purchasing an item or service at a better price and charging the purchaser a new price between the particular price and the better price. Similarly, Seymour is silent regarding this limitation of Applicant’s claim. Seymour’s automated auction system allows buyers and sellers said to configure specific auction strategies that are implemented by bidder and seller agents. Nothing in Seymour’s teaches or suggests purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. Additionally, there is nothing

about the Examiner's combination of Lustig and Seymour that teaches or suggests this limitation of Applicant's claim.

In the Examiner's response to arguments, the Examiner, without citing any portion of Lustig or Seymour in support, refers to the fact that Lustig's system may accept a better offer (than the user's originally selected offer) on behalf of the user. The Examiner then asserts, "Lustig obviously teaches purchasing the particular item [or] service for the purchaser that [at] the better price and charging the purchaser a new price between the particular price and the better." **However, the Examiner's assertion is completely unsupported by the actual teachings of the reference.** Nowhere does Lustig, even if viewed in light of Seymour, teach anything regarding purchasing the item for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. In fact, the very wording used by Lustig **teaches away** from charging the user a new price between price of Lustig's original offer and the price of a better offer. As admitted by the Examiner, Lustig teaches that his system, "accepts the better offer on behalf of the User" (para. 9, 15, 25, 19 and 81). Accepting a better offer *on behalf of the user* clearly implies that the better offer, and hence the cost or price of the better offer, is accepted by Lustig's system for the user. In contrast, Applicant's claim specifically recites charging the purchaser a new price between the particular price and the better price. Therefore, Lustig's system does not necessarily or inherently include or even suggest charging the user a price **between the original price and the better price.**

Thus, for at least the reasons presented above, the rejection of claim 44 is unsupported by the cited art and removal thereof is respectfully requested.

Applicant also asserts that numerous ones of the dependent claims recite further distinctions over the cited art. However, since the rejection has been shown to be unsupported for the independent claims, a further discussion of the dependent claims is not necessary at this time.



## **CONCLUSION**

Applicant submits the application is in condition for allowance, and prompt notice to that effect is respectfully requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above-referenced application from becoming abandoned, Applicant hereby petitions for such an extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5596-00301/RCK.

Respectfully submitted,

/Robert C. Kowert/  
Robert C. Kowert, Reg. #39,255  
ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C.  
P.O. Box 398  
Austin, TX 78767-0398  
Phone: (512) 853-8850

Date: February 9, 2009